

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 51 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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GIRISHKUMAR SHANKERLAL PATEL - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

MR.P.T.JASANI for Appellant(s) : 1,

MR.A.J.DESAI, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**Date : 13/03/2007****ORAL JUDGMENT**

Present Appeal is arising out of the judgment
and order of conviction passed by the learned Special
Judge, Mehsana dated 30th December, 1994, passed in

Essential Case No.16 of 1992 whereby the appellant-accused sentenced to undergo rigorous imprisonment for six months and was ordered to pay a fine of Rs.3,000/-, in default thereof, to undergo 15 days rigorous imprisonment.

2. The prosecution case in nutshell is that present appellant-accused person was managing the affairs of the firm known as 'Navrang Traders'. The said firm was dealing with the business of cement and for that necessary licence was obtained under the Essential Commodity Act. On 19/6/1991, the Director, Civil Supply Department, Gandhinagar had inspected the premises of the firm of the respondent-accused and following irregularities were found.

- i. Stock of cement and price is not indicated.
- ii. The register regarding the sale and purchase of the cement and closing stock was not found.
- iii. Upon physical verification 72 bags of the cement was found less.
- iv. The address of the purchaser were not mentioned in the bill and sold the cement without issuing any bills.

3. For the aforementioned irregularities, the appellant-accused was served with the notice, but the reply of the complainant was found not satisfactory, a complaint came to be filed for violation of conditions under Clause 3, 8, 9 and 7 of the Gujarat Essential Articles Dealers (Regulation) Order, 1977.

4. After considering the evidence led by the prosecution, the learned Judge came to a conclusion that the prosecution has established the charge levelled against the appellant-accused beyond doubt and convicted the accused-appellant for the said offence by the impugned judgment dated 30th December, 1994 passed in in Essential Commodity Case No.16 of 1992. It is this judgment and order that has given rise to this appeal.

5. Record and proceedings are before this Court and I have been taken through the same by both the sides during the course of hearing, mainly by reading the evidence recorded during trial.

6. Mr.Jasani, learned Advocate has attempted to impress upon the Court by arguing that appellant-accused was neither a partner nor the administrator

of the firm when the inspection was carried out by the Inspecting Officer. He was present in the shop because one of the partners of the said firm was his friend. But, in view of the documents produced at Exhs.17 and 18 especially in the background of the answers given by the accused qua the original evidence led by prosecution witnesses at the time the statement was recorded under Section 313 of the Code of Criminal Procedure, Mr.Jasani, learned Advocate for the appellant has fairly submitted that accused may not press the appeal so far as conviction recorded by the learned Special Judge is concerned, but atleast he may be heard on the point of quantum of punishment and the Court should also show some indulgence so far as the order of imposition of punishment is concerned.

7. According to Mr.Jasani, on plain reading of the judgment, it is clear that the cement was normally essential commodity but at that time the State was not suffering any shortage of cement. There was no allegation of either black marketing or overpricing. The alleged breach of conditions are in nature of negligible and mainly related to maintenance of the record. Mr.Jasani, has submitted

that even formal licence was not required to be obtained in view of the scheme of Gujarat Essential Articles Dealers (Regulations) Order, 1977 for dealing in the business of the cement. It appears that the learned trial Judge found that the allegations made in the complaint was proved beyond doubt against the appellant-accused and has imposed minimum punishment prescribed under the law. Mr.Jasani, has drawn the attention of the Court to the alleged irregularities found by the Inspecting Officer on 19th June, 1991. The irregularity was that stock register was not maintained on day to day basis and no bills were issued as regards the sale of 72 bags of the cement are concerned. One document attached with the memo of appeal for which there is no resistance from the other side that about 140 bags were lying in the business premises and that stock was seized. But, the State Government while dealing with the appeal preferred against the order of confiscation passed by the Collector, has decided to confiscate 35 bags of cement out of total stock seized and rest of the cement bags were ordered to be returned to the appellant-accused. The appellant-accused had made representation during the entire litigation upto the State Government. So, the

conviction though is not against an unknown third person, therefore the accused can claim that this Court should grant the benefit of Probation of Offenders Act, under the provisions of Section 360 read with Section 361 of the Code of Criminal Procedure and accused may not be sent to the Jail to serve the sentence imposed by the learned trial Court. If the amount of fine is increased, the appellant-accused is also ready and willing to pay the same. Mr.Jasani, has also submitted that the shop where the accused was managing the affairs of the business of cement was visited on 19th June, 1991. In all 16 years have been passed. The appellant-accused was on bail pending trial and at present he is also enjoying the bail. The appellant-accused has settled himself in other business. The partnership firm which was actually dealing with the business of cement was in the name and style of 'Navrang Traders'. The accused was neither the proprietor and nor he has worked after the incident.

8. Mr.Jasani has placed reliance on the decision of this Court in case of (The) State of Gujarat Vs. Ganpatbhai Premjibhai Joshi, reported in

1998 (2) G.L.H. 787 where similar question had cropped up before this Court and while answering to this question and dealing with the grievance raised by the State the Hon'ble Court has observed thus:

"4. In the decision reported in AIR 1975 SC 845, almost similar situation was dealt with by Their Lordship and it was a case under the Prevention of Food Adulteration Act and the benefit was decided to be given.

5. Here also, it may be seen that 1958 Enactment whereby the formal expression of the legislative will to grant benefit of probation was clarified and expressed and in no uncertain terms, for the Enactments which were already on the Statute Book, necessary, reference has been made in Section 18 to exclude them. Essential Commodities Act, 1958 is not one of the Statutes referred Commodities Act was very much in force at the time when said Probation of Offenders Act, 1958 came to be enacted, the Parliament, in its wisdom, has chosen not to exclude it.

6. Under the circumstances, even the provision for minimum punishment will not come in the way because benefit of probation has to be given to the offenders under the provisions of Indian Penal Code as well as under the provisions of all other Statutes providing for penal offences unless they are specifically excluded either in

the Statute itself or under the provisions of the said Probation of Offenders Act. This being not the position in relation to the offences under Essential Commodities Act, obviously, the decision taken by the Ld. Spl. Judge cannot be said to be, in any manner, wrong."

8.1 Mr.Jasani, in support of his argument has also placed reliance to one judgment in case of Harivallabha and Another Vs. State of Madhya Pradesh, reported in (2005) 10 S.C.C. 330. He has submitted that in this cited decision the accused was given benefit of Section 360 read with Section 361 of Criminal Procedure Code instead of serving substantive sentence. It would be proper to reproduce the relevant paragraphs of this judgment.

"3. Learned Counsel appearing on behalf of the appellants submitted that the appellants are first offenders and in the facts and circumstances of the case they should have been dealt with under the provisions of Section 360 of the Code of Criminal Procedure, 1973 (for short "the Code") and the High Court reduced the sentence of imprisonment from three years to three months without recording any reasons, as required under Section 361 of the Code, which lays down that for special reasons to be recorded, a court can refuse to release a person on probation of good conduct under Section 360 of the Code. In our view, in the facts and circumstances

of the present case, the appellants should have been dealt with under the provisions of Section 360 of the Code.

4. Accordingly, the appeal is allowed in part and while upholding the conviction and sentence of fine awarded to the appellants, sentence of imprisonment awarded against them is set aside and the trial Court is directed to deal with them under the provisions of Section 360 of the Code. The appellants, who are on bail, are discharged from the liability of bail bonds."

9. There is no dispute qua the settled legal position that cases wherein minimum punishment is prescribed by a statute, the Court can exercise the discretion in favour of the appellant-accused by giving benefit of Probations of Offenders Act under the provisions of Section 360 read with Section 361 of the Code of Criminal Procedure. The Apex Court in case of Harivallabha (Supra) has decided to give the benefit to the appellant-accused under the provisions of Section 360 read with Section 361 of the Code of Criminal Procedure while disposing of a criminal case registered for the offence punishable under the Essential Commodity Act.

10. With above observations this Court has

confirmed the order of learned Special Judge and as regards the conviction part is concerned, had granted benefit of Section 360 of Criminal Procedure Code to an accused who found guilty of the offence punishable under the Essential Commodities Act. In subsequent decision of this Court, the benefit of Section 360 of the Code of Criminal Procedure has been recorded to victims by stating details of the fact about the accused who held guilty. One is in **Criminal Appeal No.60 of 1995 in case of Munafbhai Mohmad Arif Vohra Vs. State Of Gujarat decided on 15th February, 2007** and another in **Criminal Appeal No.89 of 1989 in case of Mohanbhai Dayalbhai Vs. State of Gujarat decided on 07th March, 2007.**

11. Therefore, it is rightly submitted by Mr.Jasani, that this is a case where the Court should exercise the powers vested under the provisions of Section 360 of the Code of Criminal Procedure.

12. Mr.A.J.Desai, learned A.P.P., has submitted that normally the Court in an essential commodity case should not given the benefit of Probation of Offenders Act, but when the accused was not doing the

business of running a fair price shop and has not been found doing black marketing or overpricing and at the relevant point of time there was no shortage of cement, the Court while confirming the order of conviction may alter the punishment imposed by the learned trial Court in an appropriate legal way.

13. In view of aforesaid discussion and in the result, the present Criminal Appeal No.51 of 1995 is partly allowed. While confirming the judgment and order of conviction passed by the learned Special Judge, Mehsana in Essential Commodity Case No.16 of 1992, on 30th December, 1994, of course by enhancing the amount of fine imposed by the learned trial Court, the order of substantive sentence is hereby altered.

13.1 The amount of fine imposed by the trial Court is enhanced to Rs.18,000/- (Rupees Eighteen Thousand Only). Over and above the amount of fine imposed by the trial Court and paid by the appellant-accused, the appellant-accused shall pay the remaining amount of fine i.e. Rs.15,000/- (Rupees Fifteen Thousand Only) with the trial Court within 30 (thirty) days from the date of receipt of copy of

the writ, failing which the trial Court shall issue non-bailable warrant for arrest of the appellant-accused and he will be liable to serve the sentence imposed upon him by the trial Court.

13.2 The appellant-accused is hereby directed further to execute the bond of Rs.5,000/- (Rupees Five Thousand Only) of good conduct with one surety of the like amount for a period of one year under the scheme of Section 360 read with Section 361 of Criminal Procedure Code, 1973 while paying the amount of fine. The appellant-accused shall execute the bond of good conduct before the concerned trial Court within a period of 30 (thirty) days from the date of receipt of the copy of this writ, failing which the trial Court shall issue non-bailable warrant for arrest of the appellant-accused and he will be liable to serve the sentence imposed upon him by the trial Court. The order of substantive sentence shall remain under suspension till the period of bond of good conduct i.e. for one year and shall become inoperative on completion of the period of one year.

13.3 The appellant-accused is also directed that in case of violation of any of the conditions of the

bond of good conduct, the trial Court shall at liberty to issue warrant of arrest for serving the sentence imposed by the trial Court.

13.4 The Bail Bond executed by the appellant-accused shall stand discharged on the date on which the appellant-accused executes the bond of good conduct before the trial Court. Order and Direction accordingly.

(C.K.BUCH, J.)

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